

DONALD D. DUNN

IBLA 85-127

Decided June 25, 1985

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease AA-48558-AF under 30 U.S.C. § 188(c) (1982) and setting forth conditions for reinstatement under 30 U.S.C. § 188(d) and (e) (1982).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Under 30 U.S.C. § 188(c) (1982), the Secretary is without authority to reinstate an oil and gas lease terminated by operation of law for failure to pay annual rental timely where the lessee fails to submit the full amount of rental due within 20 days of the anniversary date of the lease.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Under 30 U.S.C. § 188(d), (e) (1982), a noncompetitive oil and gas lease terminated automatically for untimely payment of annual rental may be reinstated if the petitioner shows that failure to pay timely was inadvertent and submits within 60 days from receipt of notice of termination a petition for reinstatement together with the required back rental accruing from the date of termination. Petitioner must also agree to increased rental and royalty rates and submit a reinstatement fee and Federal Register publication costs.

APPEARANCES: Donald D. Dunn, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Donald D. Dunn appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated October 16, 1984, denying his petition

for class I reinstatement of oil and gas lease AA-48558-AF under 30 U.S.C. § 188(c) (1982). BLM further specified the conditions required under 30 U.S.C. § 188(d) and (e) (1982) for a class II reinstatement of the lease.

The original lease (AA-48558) covering 10,184 acres was issued to United Arctic Oil Inc. effective June 1, 1983. On June 10, 1983, United Arctic Oil Inc. assigned 160 acres of the lease to appellant, and BLM approved the assignment effective September 1, 1983.

By decision of July 23, 1984, BLM notified Dunn that his lease had terminated on the anniversary date of the lease, June 1, 1984, for failure to pay the rental in a timely manner. BLM also informed him of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and pursuant to 30 U.S.C. § 188(d) and (e) (1982) (class II reinstatement). BLM outlined the requirements for both classes of reinstatement.

Dunn received the notice of termination on August 3, 1984, and filed his petition for class I reinstatement on August 9, 1984.

In its October 16, 1984, decision, BLM denied Dunn's petition for a class I reinstatement because the rental which was received by BLM on June 29, 1984, was not paid within 20 days of the anniversary date of the lease, June 1, 1984. BLM also noted that his petition did not show reasonable diligence in mailing the payment, or a justifiable reason for the delay in payment, as required by 43 CFR 3108.2-1(c)(1)(ii) (1983). However, BLM determined that his failure to pay the rent on time was inadvertent and that his lease could be reinstated under the provisions of a class II reinstatement provided he meet the following stated conditions:

1. Agree to the enclosed amendment of lease terms. Agreement must be indicated by signing and returning one copy of the amendment to this office. The other copy is for your lease records.
2. Submit \$ 640 to bring the back rentals for the lease to the amount required by the new \$ 5 per acre or fraction thereof rate.
3. Submit \$ 500 for the administrative costs of reinstating the lease.
4. Submit \$ 136 for the cost of publishing a notice of the proposed reinstatement of the lease in the Federal Register. The total amount to be submitted is \$ 1,276.

BLM concluded by allowing Dunn until November 19, 1984, to meet these conditions for class II reinstatement, and he has made submissions to BLM in an effort to qualify. Nevertheless, he has appealed the denial of his petition for reinstatement under class I.

In his statement of reasons, appellant asserts that his check dated June 1, 1984, was inadvertently delayed. He points out that his usual procedure is to pay all bills between the first and tenth of the month. He explains that he was appointed personal representative for an elderly couple

both of whom were very ill and in confinement; that the husband died on June 18, 1984, and that he (appellant) had to tend to the personal and business affairs of the deceased and his widow.

[1, 2] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease, and where no oil or gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2(a) (class I). E.g., Harry L. Bevers, 84 IBLA 158, 160-61 (1984); Leo M. Krenzler, 82 IBLA 205, 207 (1984); Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 79 IBLA 70, 72 (1984).

Even assuming that appellant could show that the failure to pay was justifiable or not due to a lack of reasonable diligence, class I reinstatement is unavailable to appellant because of his failure to pay the rental within 20 days after the anniversary date. E.g., Charles F. Egger, 85 IBLA 385, 387 (1985), Jerry D. Powers, 85 IBLA 116, 119 (1985); Samson Resources Co., 71 IBLA 224, 229 (1983). Therefore, the subject lease could only be considered for reinstatement under class II.

In order to qualify for class II reinstatement, appellant must meet the requirement set forth in BLM's October 16, 1984, decision. BLM received appellant's \$ 160 check for the rental on June 29, 1984, and his petition for reinstatement on August 9, 1984. The case file contains the oil and gas lease amendment dated October 22, 1984, and signed by appellant in which he agrees to new lease terms increasing the rental and royalty rates. This document was received by BLM on October 30, 1984. Also, the receipt and accounting advice included in the file verifies that BLM received \$ 1,276 from appellant on October 30, 1984.

The case file will be returned to BLM for class II reinstatement of lease AA-48558-AF, provided that a new oil and gas lease has not been issued for any of the lands included in the terminated lease and appellant otherwise meets the requirements for reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:
Gail M. Frazier Will A. Irwin
Administrative Judge

Administrative Judge

